

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
January 28, 2005 through February 3, 2005

A list of appeals with short title, jurisdictional predicate, subject matter and key issues is prepared each week.

Some of these filed appeals may never reach decision on the merits because of dismissal on motion, sua sponte, or for time deficiencies or because of stipulated withdrawals by the parties. Also, some counsel fail to file timely jurisdictional statements and thus the list should not be treated as comprehensive for any particular week.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Court Rule 500.11 and direct any questions to the Clerk's Office.

For January 28, 2005 through February 3, 2005 the following jurisdictional statements for appeals were filed:

BEECHWOOD RESTORATIVE CARE CENTER, et al. v. SIGNOR:
4TH Dept. App. Div. order of 10/1/04; affirmance; leave to appeal granted by Court of Appeals, 1/18/05;
DISCLOSURE - FREEDOM OF INFORMATION LAW (FOIL) (PUBLIC OFFICERS LAW, ARTICLE 6) - NEW YORK EQUAL ACCESS TO JUSTICE ACT (EAJA) (CPLR ARTICLE 86) - WHETHER A PREVAILING PARTY IN A FOIL PROCEEDING CAN OBTAIN ATTORNEYS' FEES PURSUANT TO EAJA - CRITERIA FOR AWARD OF COUNSEL FEES UNDER FOIL;
Supreme Court, Monroe County denied petitioners' application for attorneys' fees in a CPLR article 78 proceeding; App. Div. affirmed.

DiPASQUALE v. SECURITY MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 12/7/04; affirmance; motion to dismiss appeal pending;
MOTIONS AND ORDERS - CHALLENGE TO APPELLATE DIVISION ORDER AFFIRMING SUPREME COURT ORDER DENYING PLAINTIFF'S MOTIONS TO VACATE A JUDGMENT ENTERED ON DEFAULT AND TO SERVE AN AMENDED COMPLAINT;
Supreme Court, New York County denied plaintiff's motions to vacate his default on an earlier dismissal motion for failure to state a cause of action and to grant leave to amend his complaint; App. Div. affirmed.

GLENBRIAR COMPANY v. LIPSMAN, et al.:

1ST Dept. App. Div. order of 10/21/04; affirmance; leave to appeal granted by App. Div., 1/18/05;
LANDLORD AND TENANT - RENT REGULATION - SUMMARY PROCEEDING TO REGAIN POSSESSION OF RENT STABILIZED APARTMENT - TENANTS' USE OF RENT STABILIZED APARTMENT AS THEIR PRIMARY RESIDENCE;
Civil Court, Bronx County judgment awarding petitioner-landlord possession of rent-stabilized apartment; Appellate Term, 1ST Dept. reversed, granted final judgment of possession to tenants and dismissed the petition; App. Div. affirmed.

HIRALDO, &c., et al. v. ALLSTATE INSURANCE COMPANY, et al.:

2ND Dept. App. Div. order of 6/1/04; affirmance; leave to appeal granted by Court of Appeals, 1/18/05;
INSURANCE - CONTRACTS - INSURANCE LAW § 3420(a)(2) - CONSTRUCTION OF CONTRACT COVERING LANDLORD'S LIABILITY FOR LEAD PAINT EXPOSURE - WHETHER INSURANCE CONTRACT LIMITS LIABILITY FOR FULL SPAN OF COVERAGE OR ONLY LIMITS LIABILITY FOR EACH TERM OF COVERAGE;
Supreme Court, Kings County granted Allstate Insurance Company's cross motion for summary judgment dismissing the complaint insofar as asserted against it; App. Div. affirmed.

OUTAR, et al. v. CITY OF NEW YORK:

2ND Dept. App. Div. order of 10/18/04, bringing up for review prior nonfinal order of 9/10/01; modification and affirmance (10/18/04 order); modification and grant of summary judgment to plaintiffs (9/10/01 order); leave to appeal granted by Court of Appeals, 1/18/05; Rule 500.4 review pending;
LABOR - SAFE PLACE TO WORK - LABOR LAW § 240(1) - CITY TRANSIT AUTHORITY EMPLOYEE INJURED WHILE WORKING ON SUBWAY TRACKS WHEN EQUIPMENT STORED ON SHELF FELL ON HIM - WHETHER INJURY COVERED BY LABOR LAW § 240 AS AN ELEVATION-RELATED INCIDENT; SUMMARY JUDGMENT;

Supreme Court, Kings County denied plaintiffs' motion for summary judgment, granted defendant's cross motion for summary judgment and dismissed the complaint; App. Div. modified by (1) deleting the provision denying plaintiffs' motion for summary judgment on the issue of liability and substituting therefor a provision granting the motion and (2) deleting the provision granting that branch of defendant's cross motion which was for summary judgment dismissing the cause of action to recover damages based on a violation of Labor Law § 240(1) and substituting therefor a provision denying that branch of the cross motion; following a trial on the issue of damages, App. Div. modified the judgment by reducing the damages award and affirmed the judgment as so modified.